

Appl. No. 10/052,953  
Amendment dated June 14, 2004  
Reply to Office action dated April 15, 2004

### **REMARKS/ARGUMENTS**

As a preliminary matter, Applicants note that the present Office Action has been made Final. Applicant believes that the Finality of this Office Action is improper. As noted in MPEP § 706.07(a):

Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17 (p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art.

(Emphasis Added). In the present case, independent claim 1, and dependent claims 2-5 were not amended in Applicant's previous Amendment (filed on January 20, 2004), and these claims are currently rejected under newly cited art. As such, and according to MPEP § 706.07(a), the Finality of this Office Action is improper, and Applicant respectfully requests that it be withdrawn.

Applicants have received and carefully reviewed the Office Action of the Examiner mailed April 15, 2004. Claim 1 has been amended and new claims 25 and 26 have been added. Support for the amendment and new claims can be found in the specification as originally filed at, for example, page 5, lines 1-8 and line 28 through page 6, line 8, and in figures 3A, 3B, 4A, and 4B. No new matter has been added. Claims 1-26 are pending. Reconsideration and reexamination are respectfully requested.

#### **Rejection under 35 U.S.C. § 102(b)**

Claims 1-3 are rejected as being anticipated by Ng (US 5,731,832). Applicants traverse the rejection. The claimed method involves the following steps:

- (1) illuminating the monitored area with a pattern, the pattern defining one or more lighter regions and one or more darker regions;
- (2) capturing a live image of the monitored area including the pattern; and
- (3) detecting an object entering the monitored area when a change is detected in the pattern in the live image.

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Ng fails to teach these steps. The method of Ng appears to involve the following steps:

- (1) capturing a reference image of an area;
- (2) capturing a live image of the area; and
- (3) comparing the reference image to the live image, and if a change is detected, an alarm is triggered.

The Examiner asserts that illuminating a monitored area with light anticipates the claimed step of illuminating the monitored area with a pattern. Applicants respectfully disagree. Independent claim 1, as amended, recites illuminating the monitored area with a pattern that defines one or more lighter regions and one or more darker regions. Applicants have reviewed the Ng reference and have not found any step of illuminating the monitored area with such a pattern. Ng mentions sunlight and "ambient" light, but does not appear to teach an actual method step of illuminating the monitored area with a pattern. Even if one were to consider the sunlight or ambient light discussed by Ng as a "pattern", Ng clearly does not teach the claim element of illuminating the monitored area with a pattern that defines one or more lighter regions and one or more darker regions, as is now recited in claim 1. Ng thus fails to teach each and every element of claims 1-3. Reconsideration and withdrawal of the rejection is respectfully requested.

#### Rejection under 35 U.S.C. § 103

Claims 4 and 5 are rejected as being unpatentable over Ng. The Examiner asserts that Ng teaches every element of the claims except for the specific patterns, and asserts that it would have been obvious to select any pattern because the light used by Ng is a pattern and light can be considered static or dynamic if its intensity changes or if the light is mounted on a moving support. Applicants respectfully disagree. As stated above, Ng fails to teach the method step of illuminating the monitored area with a pattern that defines lighter and darker regions.

There is no motivation for one of ordinary skill in the art to modify the method of Ng to add such a step because Ng's method does not rely on a light pattern projected onto the monitored area as a means of detection. Ng teaches comparing a live image to a reference image, with detection of an object based on differences in the entire compared images. This is quite different from the claimed method of illuminating an area with a pattern, capturing a live image of the area including the pattern, and basing object detection on changes in the pattern that was projected onto the area. The claimed method is further distinguished from Ng in that the

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claimed method involves projecting a pattern including lighter and darker areas onto the monitored area. Even if one were to consider the sunlight or ambient light of Ng to be a pattern, illuminating an area with such light differs considerably from projecting a pattern of lighter and darker regions onto a monitored area, as is instantly claimed.

Additionally, it appears the Examiner has not considered the definition of "dynamic pattern" provided by the specification. Page 5, lines 6-7 of the specification defines a dynamic pattern as "one where the spatial position of the light areas and dark areas is moving." Applicants submit that one of ordinary skill in the art, having read the instant specification, would not have been motivated to modify the method of Ng to include a dynamic light pattern in a monitored area, such as a museum exhibit. As Ng does not teach or contemplate illuminating the monitored area with any particular type of light, but merely discusses sunlight and ambient light as being present, there is no motivation for one to modify Ng's method to include anything other than ambient light. The only motivation for one to modify the method of Ng to achieve the claimed method appears to be Applicants' own specification, which is improper. Ng fails to teach or suggest the limitations of the claimed invention. Additionally, Ng fails to provide any guidance, suggestion, or motivation for one of ordinary skill in the art to modify his method to achieve the instant invention. Withdrawal of the rejection is respectfully requested.

Reconsideration and reexamination are respectfully requested. It is submitted that, in light of the above remarks, all pending claims 1-26 are now in condition for allowance. If a telephone interview would be of assistance, please contact the undersigned attorney at 612-677-9050.

Respectfully Submitted,

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By their attorney:

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